

For:
Introduction and Referral to Planning Commission: 6/5/23
Planning Commission Review: _____
Public Hearing _____
Adoption _____
Effective: _____

THE TOWN OF MOUNT AIRY, MARYLAND

ORDINANCE NO. 2023-30

**AN ORDINANCE TO AMEND PART I OF THE CODE OF THE TOWN OF
MOUNT AIRY ENTITLED “ADMINISTRATIVE LEGISLATION”,
CHAPTER 25 ENTITLED “PLANNING COMMISSION”,
ARTICLE II ENTITLED “ADEQUATE PUBLIC FACILITIES”,
SECTION 25-5 ENTITLED “ADEQUATE FACILITIES” FOR THE PURPOSE OF
AMENDING THRESHOLD OPEN SPACE REQUIRED FOR MIXED USE
DISTRICT (MXD) TO QUALIFY FOR AN OPEN SPACE INADEQUACY
WAIVER**

WHEREAS, the Parks Board has certified that the Town’s parks and open space facilities are “inadequate” as defined in the Town’s Adequate Public Facilities Ordinance (APFO), Section 25-5G(1), applicable to all proposed development within the Town; and

WHEREAS, under the current APFO, if the Town is inadequate in terms of parks/open space, a development may not receive concept plan approval unless granted a waiver, and the current APFO does not allow for mitigation or payment of a fee in lieu to allow the development process to proceed during periods of inadequacy with respect to parks/open space; and

WHEREAS, Subsection G(2) allows the Town Planning Commission to provide a parks and open space inadequacy waiver to a development that itself provides a certain amount of open space as set forth therein depending on the use and/or zoning of the property in question; and

WHEREAS, industrial developments, commercial developments and developments that in whole or in part propose residential development, with the exception of developments in the Downtown Zone (“DTZ”) and the Mixed Use District (“MXD”), must provide at least three (3) acres of open space per one hundred (100) new residents that the development proposes to add to the Town, or a pro-rata proportion thereof, pursuant to Section 25-5G(2), in order to qualify for an open space inadequacy waiver; and

WHEREAS, in order to qualify for consideration for a waiver of open space inadequacy by the Planning Commission, pursuant to Section 25-5G(2), a MXD development plan must provide at least ten percent (10%) of the total gross acreage of the

project set aside for open space, which is also the minimum open space required of a MXD development, even when the Town has adequate open space, pursuant to Section 98-23I(1); and

WHEREAS, the Town Council has determined it to be in the best interests of the Town and its residents, to mitigate its open space inadequacy, to require MXD developments to provide three (3) acres of open space to one hundred (100) new residents that a development proposes to add to the Town, or a pro-rata proportion thereof, in order to qualify for consideration of an open space inadequacy waiver; and

WHEREAS, this Ordinance was introduced at the Town Council meeting that occurred on June 5, 2023, and was referred to the Planning Commission for review pursuant to the Town Code, Section 98-55; and

WHEREAS, after review at its regular meeting on _____, the Planning Commission voted to forward a _____ recommendation; and

WHEREAS, a public hearing on this Ordinance was duly noticed and advertised, and took place on _____; and

WHEREAS, the Town Council finds that the changes recommended in this Ordinance as set forth below are desirable and in the best interests of the Town and its residents and hereby adopts this ordinance on the date below indicated with an effective date also below indicated.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE TOWN OF MOUNT AIRY:

Section 1. That Part I, Article II, Chapter 25, Section 25-5 of the Code of the Town of Mount Airy is hereby repealed and reenacted as follows:

§ 25-5. Adequate facilities.

* * *

G. Parks and open space.

- (1) Parks and open space provisions are adequate if the Parks Department certifies that the ratio of parks and open space acreage to population will meet or exceed at least three acres per 100 persons, considering:
 - (a) Existing population from existing homes;
 - (b) Projected population from future building from residences approved at the preliminary plan stage;

- (c) Projected population from future building from residences under construction or from recorded lots from previously approved preliminary plans for which a permit could be issued at any time in the future;
 - (d) Projected population from residents in the proposed development project.
- (2) Until such time as the Town's inventory of parks and open space meets the three acres per 100 persons standard, the Planning Commission may waive strict application of the park and open space adequacy standard, provided that each development project, including any industrial, commercial, residential, Mixed Use District (MXD) and Mixed Use in the Community Commercial District (MXU-CC) development, that is granted a waiver under this subsection provides at least three acres of park and open space per 100 persons, or a pro-rata portion thereof, of projected population from residents in the proposed development project, with the following exceptions:
- (a) Only for developments located in the Downtown Zone (DTZ) with lots less than or equal to 15,000 square feet, the parks and open space requirement will be fully exempted.
 - (b) Only for developments located in the Downtown Zone (DTZ) with lots greater than 15,000 square feet in accordance with the requirements set forth in this Code applicable thereto, a development project may be granted a waiver under this subsection as follows:

POS - Parks and open space required to be dedicated to the Town of Mount Airy, in acres

TA - Total gross acres of parcel

P - Projected number of resident persons added

CSF - Total gross commercial space in square feet being provided

[1] Where providing three acres of parks and open space per 100 persons would equate to less than or equal to 5% of the total gross parcel acreage of the proposed development, then the development must provide the pro-rata share of three acres per 100 persons (no exceptions required); or

If $POS < 0.05 \times TA$;

$POS = (3/100) \times P$

- [2] Where providing three acres of parks and open space per 100 persons would equate to more than 5% of the total gross parcel acreage of the proposed development, then the development must provide the pro rata share of 3 acres per 100 persons less 1 person for every 200 square feet of commercial space provided in the proposed development project, or 5% of the gross parcel acreage, whichever is greater, in order to qualify for the exception:

If $POS > 0.05 \times TA$;

$POS = (3/100) \times (P - CSF/200)$

or

$POS = 0.05 \times TA$;

whichever is greater.

- ~~(e) A development project in the Mixed Use District (MXD) may be granted a waiver under this subsection if it provides 10% of the total gross acreage of the project for open space.~~

BE IT ENACTED AND ORDAINED BY THE AUTHORITY AFORESAID, that this Ordinance shall take effect on the ___ day of _____, 202__.

Introduced this 5th day of June, 2023.

Enacted this ___ day of _____, 2023 by a vote of _____ in favor and _____ opposed.

ATTEST:

Lynne Galletti, Secretary

Tim Washabaugh, President of the Town Council

Approved this ____ day of _____, 202_.

ATTEST:

Lynne Galletti, Secretary

Larry Hushour, Mayor

REVIEWED AND APPROVED AS TO LEGAL FORM AND SUFFICIENCY.

This ____ day of _____, 202_.

Thomas V. McCarron, Town Attorney